

# **TOWN OF GOULDSBORO**

## **SHELLFISH CONSERVATION**

Adopted: June 19, 2001  
Amended: May 10, 2006

### **1. AUTHORITY**

This ordinance is enacted in accordance with M.R.S.A. Section 6671.

### **2. PURPOSE**

To establish a shellfish conservation program for the Town of Gouldsboro which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing
- B. Limiting the number of shellfish harvesters
- C. Restricting the number and area where digging is permitted
- D. Limiting the minimum size of clams taken
- E. Limiting the amount of clams taken daily by a harvester

### **3. SHELLFISH CONSERVATION COMMITTEE**

The Shellfish Conservation Committee consisting of five (5) members to be appointed by the selectmen for terms of one (1) year will administer the Shellfish Conservation Program for the Town of Gouldsboro.

The Committee's responsibilities include:

- A. Surveying each clam producing area at least once every three years to establish size distribution and density and annually estimating the status of the town's shellfish resources;
- B. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purposes of shellfish conservation;
- C. Keeping this ordinance under review and making recommendations for its amendments;
- D. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
- E. Recommending conservation closures and openings to the Board of Selectmen in conduction with area biologists of the Department of Marine Resources;
- F. Submitting an annual report to the Municipality and Department of Marine Resources covering the above topics and all other committee activities;
- G. Conducting conservation programs.

#### **4. DEFINITIONS**

- A. Resident: The term “resident” refers to a person who has been domiciled in this municipality for at least three (3) months directly prior to the time his/her claim of such residence is made.
- B. Nonresident: The term “non resident” means anyone not qualified as a resident under this ordinance.
- C. Shellfish, Clams and Intertidal Shellfish Resources: When used in the context of this ordinance the words “shellfish” “clams” and “intertidal shellfish resources” means soft-shell clams (*Mya arenaria*).
- D. Municipality: Refers to the Town of Gouldsboro, Maine.

#### **5. LICENSING**

A Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

##### **A. Designation, Scope and Qualifications:**

- 1. Resident Commercial Shellfish License: This license is available to residents of the Town of Gouldsboro who have completed shellfish conservation requirement and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 2. Nonresident Commercial Shellfish License: This license is available to nonresidents of this municipality who have completed conservation requirements and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 3. Resident Student Commercial License: This license is available to any full time student, who has attained his or her 13<sup>th</sup> birthday but has not yet attained his or her 18<sup>th</sup> birthday as of 30 June of the application year and have completed the required conservation work hours. The student applicant shall be enrolled fulltime in a primary or secondary school or educational program. The student must remain enrolled, or had graduated, for the period of license issuance. This license entitles the student to dig and take any amount of shellfish from the shores and flats of this municipality.
- 4. Nonresident Student Commercial License: This license is available to any full time student, who has attained his or her 13<sup>th</sup> birthday but has not yet attained his or her 18<sup>th</sup> birthday as of 30 June of the application year and have completed the required conservation work hours.. The student applicant shall be enrolled fulltime in a primary or secondary school or educational program. The student must remain enrolled, or had graduated, for the period of license issuance. This license entitles the student to dig and take any amount of shellfish from the shores and flats of this municipality.

5. Resident Recreational Shellfish License: This license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
  6. Nonresident Recreational Shellfish License: This license is available to any person that is not a resident nor real estate taxpayer of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
  7. License must be signed: The licensee must sign the license to make it valid.
- B. Application Procedure: Any person may apply to the Town Clerk for licenses required by this ordinance on forms provided by the municipality.
1. Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth, date, height, weight, signature and whatever information the municipality may require.
  2. In addition to completing an application, an applicant for a student commercial license shall also provide:
    - (a) Proof that the applicant has attained his or her 13<sup>th</sup> birthday but has not yet attained his or her 18<sup>th</sup> birthday.
    - (b) Proof of current enrollment in a school or state approved educational program.
    - (c) Proof of residency
    - (d) The student's parent or legal guardian must sign the application, in person at the town office.
  3. Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.
  4. Change of Residency: The Shellfish Committee shall vote to void a resident license after a license holder has moved from Gouldsboro and is domiciled elsewhere for ninety days.
- C. Fees: Fees for the licenses must accompany, in full, the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1.00 for each license which will be retained by the Clerk as payment for issuing the license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement. A municipal commercial or recreational shellfish license must be in possession when engaged in activities in the taking of shellfish from town flats. Recommend: This be written on back of licenses. A person holding a state commercial shellfish license is ineligible for a resident or no-resident recreational shellfish license.
- D. Issuance of Licenses: Clam resources vary in size and distribution from year to year and over the limited soft clam producing areas of the town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's clam resources,

its size, distribution, abundance and the wardens reports, as required by section 3, the shellfish committee in consultation with the DMR Area Biologist will determine whether limiting of commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

**Limited Sales:** When the Shellfish Conservation Committee determines limiting shellfish licenses is an appropriate shellfish management option for one or more license categories for the following year:

1. Prior to each April 1, the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to May 15, the shellfish conservation committee shall notify the Town Clerk in writing of the allocation of shellfish licenses to be issued.
3. Notice of the date on which licenses will be issued and the procedure for application shall be published in a trade paper or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. A copy of the notice shall be provided to the Commissioner of Marine Resources.
4. The Town Clerk shall issue resident commercial licenses from July 1, on a first come first serve basis.
5. The Town Clerk shall issue nonresident commercial licenses from July 1 at a rate of 10% of all resident licenses issued.

**Open License Sales:** When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:

1. Notice of the dates, places, times and the procedures for the license sales shall be published in a trade paper or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. A copy of the notice shall be provided to the Commissioner of Marine Resources.
2. For each commercial and recreational license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident licenses issued. For each recreational license category, the Town Clerk shall issue one

license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every ten additional resident licenses issued.

- E. License Expiration Date: Each license issued under the authority of this ordinance expires at midnight on the 30<sup>th</sup> day of June next following date of issue.
- F. Reciprocal Harvesting Privileges: Not available.
- G. Military Exemption Clause: Residents serving or completing full time active duty in the U.S. Armed Forces will be exempt from licensing requirements for up to thirty (30) days after separation from those services.
- H. Fees Waived: Recreation and Commercial Shellfish license fees will be waived for residents and non-residents sixty-five (65) years or older and twelve (12) years or younger.
- I. Suspension: Any shellfish licensee convicted of digging in an area closed for conservation, or night digging shall have his or her license automatically suspended for thirty (30) days. Any shellfish licensee having three (3) convictions for any other violations of this ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days.
  - 1. A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.
  - 2. The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.
  - 3. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) following the effective date of the suspension.

The licensee may appeal the decisions of the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request of Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

- J. Conservation Time: Beginning with license sales on 1 July 2007, all commercial license applicants will be required to complete ten (10) hours of labor for the purpose of executing shellfish conservation measures, including, but not limited to, reseeded and brushing projects, shellfish surveys and conservation committee meetings.

Applicants for Student Commercial Licenses must complete five (5) hours of conservation time. *(This requirement is effective as of 1 July 2006.)*

Conservation time can be earned in three ways throughout the year.

1. By participating in Conservation work days scheduled by the Shellfish Conservation Committee.

2. By attending the Shellfish Conservation Committee meetings. Attendance will be counted for conservation time to the nearest half hour in fifteen (15) minute increments. The applicant must attend the entire meeting to earn the conservation hours. Up to one half of the total conservation hours required to purchase a commercial license can be earned by attending Shellfish Conservation Meetings.

3. By contacting the Shellfish Warden. With at least seven working days notice, an applicant can schedule to complete conservation hours under the supervision of the Shellfish Warden.

## **6. OPENING AND CLOSING OF FLATS**

The Municipal Officers, upon the approval of the Commissioner of Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact. Any area within the Town of Gouldsboro which is closed by the Department of Marine Resources to the harvesting of shellfish shall be considered a town closure.

## **7. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS**

It is unlawful for any person to possess soft shell clams within the Town of Gouldsboro, County of Hancock which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

### **A. Definitions:**

1. Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container, constitutes a separate lot.
2. Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shellstock.

B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 5% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks, taken at random from various parts of the lot or by count of the entire lot if it contains less than one (1) peck.

C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.

## **8. POUNDAGE LIMITS**

The poundage of clams harvested is subject to a limited take. The poundage limit may vary from flat to flat.

**9. NIGHT DIGGING**

There will be no night digging or taking of soft shell clams from the shores or flats of the Town of Gouldsboro between one-half hour after sunset and no one-half hour before sunrise. All digging for clams must stop 30 minutes after sunset.

**10. SUNDAY DIGGING**

Commercial digging will be allowed on Sundays from the first of December to the first of March. At all other times, commercial digging on Sunday is not allowed. Recreational digging on Sundays is allowed year round.

**11. TAGGING REQUIRED**

The holder of a commercial shellfish license issued under section 6601 shall identify shellfish the license holder has taken by means of a harvester's tag. The tag must be consistent with the format required by the department under rules adopted under this section. Each container, hod or bag of shellstock must be tagged prior to landing the shellstock. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.

**12. PENALTY**

A person who violates any provision of this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10).

**13. EFFECTIVE DATE**

This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

**14. SEPARABILITY**

If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

**15. REPEAL**

Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance which is inconsistent with this ordinance is hereby repealed.

**16. PERIOD OF ORDINANCE**

This ordinance shall remain in effect for a period of three (3) years from the effective date.

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*Attested*  
*Yvonne P. Wilkinson*  
*Clerk, Town of Gouldsboro*

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*Date Adopted*